



AF/ITW

**NOTICE OF APPEAL FROM THE EXAMINER
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

APPELLANT: Bergersen

ATTY. DOCKET NO.: BER-P-03-054

SERIAL NO.: 10/665,441

GROUP ART UNIT: 3732

DATE FILED: Sept. 18, 2003

EXAMINER: Lewis

INVENTION: "DENTAL APPLIANCES HAVING ATTACHABLE UPPER AND LOWER HALVES
AND SYSTEMS AND METHODS FOR TREATING MALOCCLUSIONS"

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S APPEAL BRIEF TRANSMITTAL LETTER

SIR/MADAM:

Appellant submits herewith Appellant's Reply Brief in response to the Examiner's Answer dated October 16, 2008. Appellant submits that no fee is required for submission of this Reply Brief. However, the Commissioner is hereby authorized to charge any fees which may be required, or to credit any overpayment to Deposit Acct. No. 50-0595. A duplicate copy of this sheet is enclosed for this purpose.

Respectfully submitted,

(Reg. No. 35,018)

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CERTIFICATE OF MAILING

I hereby certify that this **REPLY BRIEF** is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, Alexandria, VA 22313 on November 5, 2008.

Brian M. Mattson (Reg. No. 35,018)



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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APPELLANT: Bergersen

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SERIAL NO.: 10/665,441

GROUP ART UNIT: 3732

DATE FILED: Sept. 18, 2003

EXAMINER: Lewis

INVENTION: "A SYSTEM OF DENTAL APPLIANCES HAVING VARIOUS SIZES AND TYPES AND A METHOD FOR TREATING MALOCCLUSIONS OF PATIENTS OF VARIOUS AGES WITHOUT ADJUSTMENTS OR APPOINTMENTS"

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

SIR/MADAM:

This Reply Brief is submitted in response to the Examiner's Answer dated October 16, 2008. In the Examiner's Answer, the Examiner raised at least two new points of argument.

I. STATUS OF CLAIMS

Claims 1-87 are pending in this patent application. Claims 21-34 were withdrawn from consideration. Claims 1-20 and 35-87 were finally rejected by the Examiner in a Final Rejection dated December 28, 2007 and are hereby on appeal.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-6, 8-12, 14, 16, 17, 19, 20, 35-39, 44-51, 58-66 and 68-87 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,645,420 to *Bergersen* (hereinafter "the '420 patent").
2. Claims 7, 13, 43, 52-57 and 85-87 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '420 patent.
3. Claims 15, 40 and 67 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '420 patent in view U.S. Patent No. 4,591,341 to *Andrews*.
4. Claims 6, 42 and 66 were rejected under 35 U.S.C. §103(a) as being unpatentable over the '420 patent in view U.S. Patent No. 5,328,362 to *Watson et al.*

III. ARGUMENT

B. THE WIRE OF THE '420 PATENT DOES NOT EXTEND FROM THE BASE

In the Examiner's Answer, the Examiner stated that "for purposes of the present rejection the "base" is considered to be that portion between the two roughly horizontal lines in the

reproduced Figure 5 below and the first and second walls are considered to extend upward from the base." See Examiner's Answer, page 5. The Examiner added the horizontal lines and the descriptors "first wall", "second wall" and "base" to FIG. 5 as reproduced in the Examiner's Answer shown below.

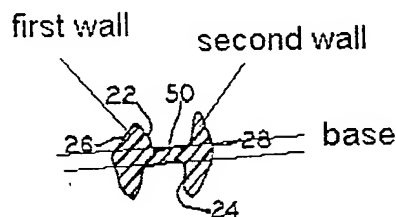


FIG. 5

Appellant respectfully submits that the Examiner is imposing a claim limitation that is in conflict with the specification and the claims. Contrary to the assertion of the Examiner that "the first and second walls are considered to extend upward from the base," independent Claims 1 and 63 require that the first wall and the second wall extend from the flat surface of the base, and independent Claim 35 requires that the first wall and the second wall extend from the occlusal surface of the base. Further, FIG. 32 of the application as filed depicts the claimed cross-bite wire insert 190 extending from the base. Moreover, independent Claim 35 requires that the wire extends vertically from a top surface of the second wall, independent Claim 58 requires that the wire extends vertically from the exterior surface of the generally U-shaped base, and independent Claim 85 requires that the wire extends from

the outer surface of one of the sockets.

Therefore, element 104 in the '420 patent identified by the Examiner as the claimed embedded wire does not meet the claim limitation of wire extending vertically from the base. In contrast to the claimed invention, the wire of the '420 patent is completely inside the appliance. (See the '420 patent, FIG. 14 and col. 10, lines 4-10.)

**B. THE '420 PATENT DOES NOT TEACH SECTIONS OF THE APPLIANCE
MANUFACTURED FROM DIFFERENT MATERIALS WHEREIN THE SECTIONS
CONTACT DIFFERENT TEETH**

In the Examiner's Answer, the Examiner alleges that the '420 patent teaches use of the different materials in sections that contact different teeth because the '420 patent discloses use of a liner material in the appliance of the '420 patent.

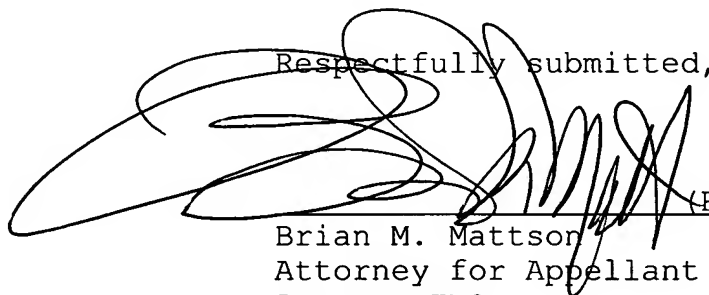
The '420 patent merely teaches use of the second material as a liner on the interior of the first material to receive teeth based on their specific individual shapes. (See the '420 patent, column 7, line 43 through column 8, line 44, and Figs. 6 and 7.) The inner surfaces of the appliance are modified by reshaping selected tooth depressions to the outer contour of their respective teeth to hold those selected teeth in a precise position. The reshaping is accomplished by introducing soft moldable material into the selected depressions. Contrary to Appellant's claimed invention, the '420 patent fails to teach use of the different materials in sections that contact different teeth. The '420

patent merely teaches use of different materials within the same socket, as different layers of the appliance. (See the '420 patent, FIGS. 6-9.) Contrary to the allegations of the Examiner, the '420 patent fails to teach use of the different materials in sections that contact different teeth as required by Claims 6, 42, 52, 58, 66 and 79. (Compare FIGS. 6-9 of the '420 patent to FIG. 10 of the application at issue.)

IV. CONCLUSION

For the foregoing reasons, Appellant respectfully submits that the rejection of Claims 1-20 and 35-87 is erroneous as a matter of law and fact and respectfully requests the Board to reverse the rejections.

Respectfully submitted,



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